



ITG News

Keeping First Nations Informed



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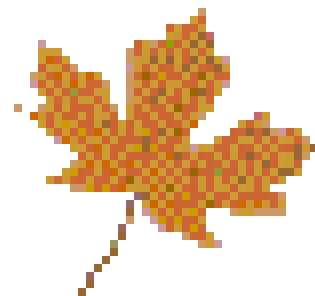
Message From The Director

As many of you are aware, we have been working on the development of an IRS/Tribal Consultation Policy for the past 18 months. We have followed a structured process that was suggested by the Advisory Committee to the Tax Exempt Government Entities Commissioner. That process included a series of 12 listening meetings and a comment period on the discussions that took place at those meetings.

I am pleased to announce that we have taken another step forward in the evolution of the policy, through the formation of a volunteer drafting group that included twelve tribal representatives. This group met in July and completed an outline of a draft policy that was heavily reliant on the feedback from the previous listening meetings. The outline was posted to our web site at www.irs.gov/tribes, along with a listing of the drafting committee members. Feedback was solicited, which could be provided to any member.

The drafting group will be meeting in late October to finalize the language in the draft policy. We hope to have the TEGE Commissioner meet with the group at that time, after which the policy will be subjected to a formal review.

While we have been very deliberate in the creation of the IRS/Tribal Consultation Policy, it is our hope that the steps we have taken will lead to a policy that works well for everyone, and enables maximum dialogue to occur wherever possible. If you have any questions or suggestions, please feel free to contact any of the members of the drafting group. Their names and contact information are listed on page 2 of this newsletter.



IN THIS ISSUE

Message from the Director	1
Consultation Policy Drafting Group Members	2
Magnetic Media Specifications Outlined by FinCEN	3
Abusive Schemes Update	3
Per Capita Payments	4/5
Communities Need to be Aware of EITC	5
Great Lakes ITG Assistance ITG Area Contacts	6
Tax Calendar	7/8

Christie Jacobs



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Magnetic Media Specifications for Title 31 Reports Are Updated

The Financial Crimes Enforcement Network has updated the Magnetic Media Filing specifications for the various forms required under Title 31. This includes FinCEN Forms 102 and 103, which are the common forms filed by tribal casinos.

The requirements for magnetic media filing of the Currency Transaction Report by Casinos (FinCEN Form 103) are contained in a 46 page document that can be accessed at http://www.fincen.gov/magmed_ctr.pdf. The specifications for Suspicious Activity Reports (SARCs) are reflected in a 29 page document that can be accessed at http://www.fincen.gov/magmed_sarc.pdf.

The specification changes are effective February 1, 2005.

Abusive Schemes Continues to be an Area of Focus

The office of Indian Tribal Governments continues to focus on combating abusive schemes that are surfacing in Indian country. Our intent is to take actions that will protect tribal assets and minimize financial risk to the tribes and tribal members. Many schemes occur without the direct knowledge of the tribe, and/or without an understanding of the consequences by the tribe. They are a major concern for both the Service and Tribal governments who are struggling to protect their sovereignty and fledging enterprises, and maintain the support of Congress and the general public. These concerns are magnified by increasing attempts by promoters to use the tax and legal status of tribes to shelter transactions from taxation and oversight.

Risks can arise when a promoter gains a foothold within a tribal enterprise and convinces a tribe to implement programs that often sound "too good to be true". Recent examples we have uncovered include improper deferrals of per capita distributions to members, improper practices involving employee leasing entities, and embezzlement of tribal funds.

We are actively seeking to partner with tribes to address these issues. Our web site was recently updated to include a special section on abusive schemes, along with a link for reporting them via e-mail or in writing. We have also included brief descriptions of the specific areas currently under review, and we will be expanding that section in the near future.

We appreciate the assistance of several tribes and tribal organizations that have been supporting this effort, and we welcome others to join with us to ensure that we can jointly address these problems as quickly as possible. Specific questions or concerns relating to abusive schemes can be directed to Ken Voght at (716) 686-4860, or via e-mail at tege.itg.schemes@irs.gov.



Per Capita Payments

Per capita payments are distributions made to tribal members by a tribe based solely on membership in the tribe. Per capita payments or “tribal distributions” are a very diverse topic and each situation must be looked at on a case by case basis. Distributions may be derived from gaming proceeds, logging and other natural resource proceeds, land leases, land claim settlements or judgments, etc. Treaties of the individual tribes also have impact on how the tribal distributions are handled. However, the following can be used as guidance in determining whether or not distributions to tribal members are taxable.

As a general rule, all income is taxable unless exempted by a treaty or statute. Indians are not exempt from federal income tax by reason of being Indian or because their income is earned in Indian country. Therefore, distributions or per capita payments made to individual tribal members are taxable unless it can be shown either in a treaty or by statute that the payment is nontaxable. This includes, but is not limited to, distributions derived from gaming proceeds or distributions from income derived from land held in trust for the tribe and not the individual. Tribal income that is not exempt from Federal income tax by treaty or statute becomes income to the individual tribal member when it is distributed or constructively received by the individual tribal member.

Are there nontaxable distributions or per capitas? In case law, it is well settled that, unless a provision of a statute or treaty expressly allows an exemption, Indians are subject to the federal income tax to the same extent as is any other citizen. Therefore, a distribution may only be nontaxable if it is exempted by statute or treaty. A distribution that Congress has elected not to tax is income directly derived from individually allotted land that remains held in trust by the Federal government. This income must be earned by the individual for whom the allotted land is held in trust for, otherwise it becomes a taxable distribution. This income applies to rents and royalties as well as income from the sale of crops or minerals from the land. Gain from the sale of livestock raised on allotted trust land has also been ruled exempt.

Distributions may also be nontaxable if they are part of a general welfare program. Certain “need”-based payments are not taxable. Although there is not express statutory exclusion for a welfare benefit, government disbursements promoting the general welfare of a tribe are not taxable. Grants received under social welfare programs that did not require recipients to establish *individual need* have not qualified for tax-exempt status. Individuals are required to establish “need.”

Other nontaxable distributions would be those specifically excluded by treaties. Treaties that denote special tax treatment, or specifically exclude certain items of income from federal taxation, may pertain to oil and gas interests, timber, fishing rights, and mineral royalties.

Once it is determined that the distribution is taxable and if the distribution is made from the tribal government to the individual, the tribal government must report the total amount of taxable per capita payments made to each tribal member on Form 1099-MISC. The total amount for each individual is reported in box 3 as other income. Withholding is only required on per capita payments if the distribution is from gaming revenue or for purposes of backup withholding. Backup withholding occurs if the individual does not provide a Social

(Continued on page 5)



(Continued from page 4)

Security number or if the IRS notifies the tribe that the Social Security number is incorrect. The withholding is reported in box 4 of the 1099-MISC.

Individual tribal members report taxable per capita distributions on line 21 of the Form 1040 with a description. The correct description will allow the return to process as quickly as possible. Please enter one of the following descriptions on line 21:

Indian Gaming Proceeds
Indian Tribal Distrib
Native American Distrib

For more information on these specific issues, contact the Indian Tribal Governments specialist in your area.

Communities Need to be Aware of EITC

Earned Income Tax Credit (EITC) is a federal tax benefit which has been in existence since 1975. That is almost 30 years. It is the single largest federal aid program supporting working families. It is larger than food stamps and Temporary Assistance for Needy Families (TANF) combined, providing more dollars than any other program according to the Annie E. Casey Foundation. In some communities, this can mean millions of additional money during tax filing season.

It is very important that communities recognize the need to ensure that their residents, and preparers available to help them file their returns, know about EITC. It is also imperative that everyone is educated in the tax matters involved here. Often we see taxpayers fall victim to predatory tax return preparers who work out of pawn shops, trading posts, car dealers, mobile home dealers, or even check cashing services. These predators often promise quick or even on-the-spot refunds for a price. The price is often more than anyone should pay.

Many preparation services are based in a nearby larger community, meaning the money ends up being spent outside the community. If a local resident goes to a city to have his return prepared by someone, he will pay fee for the preparation, shop or eat in the city, and possibly make a substantial purchase while there. This means that the smaller home community will only have benefit of what is remaining.

An obvious issue in Indian Country is the need for continued economic development in our local communities. We often overlook the solutions or partial solutions as to how we can achieve this development. Any economist will tell you that a community must invest in itself. Money spent at home makes us and our neighbors more prosperous by staying there. Please keep your EITC in your community by providing Volunteer Income Tax Assistance (VITA), volunteer community college tax preparation programs, or tribal tax assistance programs for the needy.

If you need training materials or wish to discuss these items with us, please call your Indian Tribal Governments Specialist as shown below.



Changes in Great Lakes ITG Assistance

Some ITG customers in Michigan and Wisconsin will have a new ITG primary contact person for all assistance needs. Sandy King will now be assisting all customers in Michigan and Rob Bixby will now handle assistance for all customers in Wisconsin. Jim Furnas and Jim Scrivener are no longer available for customer support.

ITG Area Contacts

Great Lakes Area

Michigan, Minnesota, Wisconsin

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Pat Kearns, Specialist
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Telephone, Internet, & Mailing Address

- **Call: Customer Account Services** toll free **877-829-5500**
- **Visit: Indian Tribal Governments** Web site at **www.irs.gov/tribes**
- **Write: Internal Revenue Service**

Indian Tribal Governments SE:T:GE:ITG
1111 Constitution Ave., NW
Washington, DC 20224

Federal Tax Calendar for Fourth Quarter 2004

October 2004

SUN	MON	TUE	WED	THU	FRI	SAT
					1	2
3	4	5	6 * Make a deposit for 9/29-10/1	7	8 * Make a deposit for 10/2-10/5	9
10	11	12 Employees report September tip income to employers if greater than \$20	13	14 * Make a deposit for 10/6-10/8	15 * Make a deposit for 10/9-10/12 ** Make a deposit for September if under the monthly deposit rule	16
17	18	19	20 * Make a deposit for 10/13-10/15	21	22 * Make a deposit for 10/16-10/19	23
24	25	26	27 * Make a deposit for 10/20-10/22	28	29 * Make a deposit for 10/23-10/26	30
31						

November 2004

SUN	MON	TUE	WED	THU	FRI	SAT
	1 Deposit Federal Un- employment Tax through September if greater than \$100	2	3 * Make a deposit for 10/27-10/29	4	5 * Make a deposit for 10/30-11/2	6
7	8	9	10 * Make a deposit for 11/3-11/5 Employees report October tip income to employers if greater than \$20	11	12	13
14	15 * Make a deposit for 11/6-11/9 ** Make a deposit for October if under the monthly deposit rule	16	17 * Make a deposit for 11/10-11/12	18	19 * Make a deposit for 11/13-11/16	20
21	22	23	24 * Make a deposit for 11/17-11/19	25	26	27
28	29 * Make a deposit for 11/20-11/23	30				

*= Make a Payroll Deposit if you are under the semi-weekly deposit rule. **
= Make a Monthly Deposit if you qualify under that rule.

NOTE: Deposits made through EFTPS are due one day
prior to the dates listed.



December 2004

SUN	MON	TUE	WED	THU	FRI	SAT
			1 * Make a deposit for 11/24-11/26	2	3 * Make a deposit for 11/27-11/30	4
5	6	7	8 * Make a deposit for 12/1-12/3	9	10 * Make a deposit for 12/4-12/7 Employees report November tip income to employers if greater than \$20	11
12	13	14	15 * Make a deposit for 12/8-12/10 ** Make a deposit for November if under the monthly deposit rule	16	17 * Make a deposit for 12/11-12/14	18
19	20	21	22 * Make a deposit for 12/15-12/17	23	24	25
26	27 * Make a deposit for 12/18-12/21	28	29 * Make a deposit for 12/22-12/24	30	31	

*= Make a Payroll Deposit if you are under the semi-weekly deposit rule.

**= Make a Monthly Deposit if you qualify under that rule.

NOTE: Deposits made through EFTPS are due one day prior to the dates listed.

Return Filing Dates

November 1st

File Form 941 for the third quarter of 2004 (if tax is deposited in full and on time, file by November 10th)

File Form 730 and pay the tax on applicable wagers accepted during September

November 30th

File Form 730 and pay the tax on applicable wagers accepted during October

January 3rd, 2005

File Form 730 and pay the tax on applicable wagers accepted during November